PUBLIC PROSECUTOR v. LEE TEAN CHEY

[A. Cr. J. (Hill J.) February 4, 1956]

[Alor Star — Criminal Appeal No. 7 of 1956]

Gaming — Common Gaming Houses Ordinance, 1953, s. 4(1)(c) — Characters lottery — Evidence of expert.

In this case the accused was charged with assisting in carrying on a public lottery to wit the 100 numbers and 1000 numbers lotteries, an offence under section 4(1)(c) of the Common Gaming Houses Ordinance. The learned Magistrate acquitted the accused without calling on his defence on the ground that the expert did not give an explanation as to how the winning number in the big sweep of the Penang Turf Club, on which the winning number in the character lottery was based, was arrived at.

Held: (1) it is only the final result of the big sweep that matters not the method by which that result is obtained and therefore the method of drawing a big sweep at one of the Turf Club in no way affects the working of a characters lottery; (2) the learned Magistrate was wrong in acquitting the accused in this case without calling on his defence, as there was clearly a *prima facie* case against him concerning 100 and 1000 numbers lotteries.

Case referred to:—

(1) *Public Prosecutor v. Lee Ee Teong* (1953) M.L.J. 244.

MAGISTRATE'S CRIMINAL APPEAL.

B. Sheldon (Federal Counsel) for the appellant.

Respondent in person.

Hill J.: — This is an appeal by the Public Prosecutor.

The respondent was charged in the Magistrate's Court, Alor Star, upon the following charges:—

(1) That you on 18.5.55 at about 11.45 a.m. at Jalan Nagore, Alor Star in the State of Kedah, did assist in carrying on a public lottery to wit the 100 numbers lottery and that you thereby committed an offence punishable under section 4(1)(c) Ord. 26/53.

(2) That you on the same date, time and place did assist in carrying on a public lottery to wit the 1000 numbers lottery and that you thereby committed an offence punishable under section 4(1)(c) Ord. 26/53.

At the close of the case for the prosecution the respondent was acquitted and discharged without being called on for a defence.

This case was tried by the Magistrate, Alor Star and I think it is advisable to set down here a substantial part of his written judgment, as follows:—

"I have on purpose refrained from dealing with P.W.2's evidence so far as it merits separate treatment. P.W.2 the Police character "Expert" claimed to have made a special study of character lotteries. He had examined Ex.P1, P2 and P3 on receiving them from P.W.1. P1 he said was a lottery ticket for the 1000 character lottery, P2 a record of stakes for 1000 and 100 character lottery and P3 lottery tickets for 1000 character lottery dated 18th May. He then proceeded to explain the working of this alleged "lottery". I am quite satisfied that P.W.2 is conversant with the transaction or game which prosecution has called character lottery. My decision in this case centres on the question of evidence; on whether it is proper for a Magistrate to make certain presumption or take judicial notice of well known matters. P.W.2 had stated in his evidence-in-chief that the character lottery was a game of chance and was so called because the winning number was based on the last 2 or in the case of the 1000 character lottery the last 3 digits of the number winning the first prize of any big sweep. In this instance the Penang Turf Club meet on 18.5.55 was said to be the event on which this game of chance was based. Ex. P5 a copy of the Straits Echo bearing that date was produced and therein was published the results of the big sweep. The date thereof certainly coincides with that on Ex. P1.

P.W.2 was however unable to give any useful information on the big sweep. In fact he confessed his ignorance of its workings. I doubt whether the big sweep held in any place is of such notoriety as a lottery that judicial notice could be taken of it as such. I must admit that I am completely ignorant of the process by which the winning numbers are arrived at. Failing the production by prosecution of evidence on this matter on which P.W.2 had said the 1000 character "lottery" hinged, I feel myself bound by Thomson J.'s decision in **Public Prosecutor v. Lee Ee Teong**[1].

Bearing in mind the definition of a character lottery given by P.W.2 and his ignorance of how big sweep winning numbers are drawn, I fail to see how any further questions put to him could assist the Court in deciding whether the transaction which prosecution called the character lottery is indeed a 'game method or device whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot . . . .' within the meaning of the Common Gaming House Ordinance 1953.

Under these circumstances I feel that I have no other course but to acquit and discharge the accused without calling for his defence."

There seems to be a marked tendency in Kedah Courts to regard the 1,000 or 100 character lottery as being a mysterious and involved device whereas, in fact, it is a quite simple game of chance based on the winning number of one of the "Big Sweeps". It is only the final result of the Big Sweep that matters not the method by which that result is obtained and it is obvious that the method of drawing a big sweep at one of the Turf Clubs in no way affects the working of a character lottery. Indeed, the result of a character lottery could well depend on the number of a motor vehicle passing a spot at a given time and the method adopted by the Registrar and Inspector of Motor Vehicles in allotting registration numbers could no more affect the working of the character lottery than does the method of drawing Turf Clubs' Sweeps.

In the case under review it was entirely because the expert witness could not explain the working of a Turf Club sweep that the respondent was discharged. The evidence, however, discloses a *prima facie* case against him concerning 100 and 1,000 numbers lotteries and I therefore allow the appeal, set aside the order of the learned Magistrate and remit the case back to him for the respondent to be called upon to make his defence.

Appeal allowed.